

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**HOLLY SWEAT,**

**Plaintiff,**

**v.**

**1:08-CV-1108  
(FJS/VEB)**

**MICHAEL ASTRUE,  
Commissioner of Social Security,**

**Defendant.**

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**APPEARANCES**

**FUSCO, BRANDENSTEIN & RADA, P.C.**  
180 Froehlich Farm Blvd.  
Woodbury, New York 11797  
Attorneys for Plaintiff

**SOCIAL SECURITY ADMINISTRATION  
OFFICE OF REGIONAL GENERAL  
COUNSEL – REGION II**  
26 Federal Plaza, Room 3904  
New York, New York 10278  
Attorneys for Defendant

**SCULLIN, Senior Judge**

**OF COUNSEL**

**JOHN ANTONOWICZ, ESQ.  
VICTOR FUSCO, ESQ.**

**KAREN T. CALLAHAN, ESQ.**

**ORDER**

On October 16, 2008, Plaintiff commenced this action seeking judicial review of Defendant's final decision denying Plaintiff's application for disability insurance benefits and supplemental security income benefits for the period from April 2005 until October 2007. *See* Dkt. No. 1. Both parties filed briefs in support of their motions for judgment on the pleadings. *See* Dkt. Nos. 7-8. On May 23, 2011, Magistrate Judge Bianchini issued a Report and Recommendation in which he recommended that the Court reverse Defendant's decision and

remand this case to Defendant, pursuant to sentence four of 42 U.S.C. § 405(g), for further administrative proceedings consistent with his Report and Recommendation. *See* Dkt. No. 12 at 21.

Currently before the Court for its review is Magistrate Judge Bianchini's Report and Recommendation to which neither party has filed any objections.

When a party does not object to a magistrate judge's report and recommendation, the court reviews that report and recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Bianchini's May 23, 2011 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Bianchini's May 23, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that Plaintiff's motion for judgment on the pleadings is **GRANTED**; and the Court further

**ORDERS** that Defendant's motion for judgment on the pleadings is **DENIED**; and the Court further


**ORDERS** that Defendant's decision is **REVERSED** and this case is **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with Magistrate Judge Bianchini's May 23, 2011 Report

and Recommendation; and the Court further

**ORDERS** that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

**IT IS SO ORDERED.**

Dated: June 24, 2011  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge